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असाधारण **EXTRAORDINARY**

भाग ∐--खंत्र 1 PART II—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

- ----मई विल्ली, बुधवार, नवम्बर 22, 1995/अग्रहायण 1, 1917

NEW **DELHI.** WEDNESDAY, NOVEMBER 22.1995/AGRAHAYANA 1, 1917 No. 651

इस भाग में मिश्र पृष्ठ संख्या दी जाती है जिससे कि यह अलग अंकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be -filed as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 22nd November, 1995/Agrahayana 1, 1917 (Saka)

The following Act of Parliament received the ansent of the President on the 22nd November, 1995, and is published for general information:—

THE WAKF ACT, 1995

No. 43 OF 1995

[22nd *November*, 1934.]

An Act to provide for the etter administration of Wakfs and for matters connected therwith or incidental thereto.

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows: -

CHAPTER I

PRELIMINARY

- 1. (1) This Act may be called the Wakf Act, 1995.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint; different dates may be appointed for different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein, be construed as reference to the commencement of that provision in such State or area.

Short title, extent and commencement.

Application of the Act.

2. Save as otherwise expmrdy provided under tihis Act, this Act shall apply fo aU wakfs whether created before or after the commencemem of this Act:

Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer to winch the Durfiah Khuwaja Saheb Act, 1955 applies.

36 of 1955.

DefinitioM,

3. In this Act, unluss the context otherwise requires —

- (a) "beneficiary" means a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law;
- (b) "benefit" does not include any benefit which a mutawalli ia entitled to claim solely by reason of his being such mutawalli;
- (c) "Board" means a Board of Wakf established under sub-section (1), or as the case may be, under sub-section (2) of section 13 and shall include a common Wakf Board eslablished under section 106:
- (d) "Chief Executive Officer¹ means the Chief Executive Officer appointed under sub-section (1) of section 23;
- (<!) "Council" means the Central Wakf Council established under section 9;
- (f) "Executive Officer" means 'he Executive Officer appointed by (he Board under sub-section (/) of section 38'.
- (g) "list of wakfs" means the list of wakfs published under sub-section (2) of section 5;
- (h) "member" means a membe_r of the Board and includes the Chairperson;
- (i) "mutawalli" means any person appointed, either verbally or under any deed or instrument by which a wakf has been created, or by a competent authority, to be the mutawalli of a wakf and includes any person who is a mutawaUi of a wakf by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the lime being managing or administering any wakf or wakf property:

Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office bearer of such committee or corporation;

- (j) "net annual income", in relation to a wakf, means net annual income determined in accordance with the provisions of the *Explanations* to sub-section (1) of section 72;
- (k) "person interested in a wakf" means any person who is entitled to receive any pecuniary or other benefits from the wakf and includes
 - (i) any person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, khan-Rah. maqbara, tn-aveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf;

- (ii) the wakif and any descendant oi the wakif and the mutawalli;
- (I) "prescribed", except in Chapter III, means prescribed byrules made by the State Government;
- (m) "regulations" means the regulations made by the Board under this Acf;
 - (n) "Shia wakf" means a wakf governed by Sb1" 1«w;
 - (o) "Sunni wakf" means a wakf governed by Sunni law;
- (p) "Survey G>mmissioiifr" means the Survey Commissioner of Wakf appointed under sub-section (1) of section 4 and includes any Additional or Assistant Survey Commissioners of Wakts under sub-section (2) of section 4;
- (q) "liibunal \ in relation to any area, means the Tribunal constituted under sub-section (1) of section 83, having jurisdiction m relation to that area;
- (/) "wakf means the permanent dedication by a person professing Islam, of any movable or immovable property lor any purpose recognised by the Mir.lim law as pious, religious or chaitable and includes—
 - (/) a wakf by user but such wakf shall not cease to be a wakf by reason only of the usei having ceased irrespective of the period of such cesser;
 - (ii) "granls", including luashrut-ul-khidrnat for any purpose recognised by the Muslim law as pious, religious or charitable; and
- (Hi) a wakf-ttlal-aulad to ihe extent to wlv'ch the pioperiy is dedicated for any purpose recognised by Muslim law as pious, religious or charitable,
- and "wakf means any person making such dedication;
- (s) "wakf deed" means any deed or instrument by which a wakf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied;
- (t) "Wakf bund" means a wakf fund formed under sub-section (1) ot section 77.

CHAPTER II

SURVEY OF WAKFS

4. (2) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Wakfs and as many Additional or Assistant Suney Commissioners of Wakfs as may be necessary for the purpose of making a survey of wakfs existing in the State at the date of the commencement of this Act.

Preliminary survey of wakfs.

- (2) All Additional and Assistant Survey Commissioners of Wakfs shall perform their functions under this Act under the general supervision and control of the Survey Commissioner oi W.ikK
- (3) The Survey Comniissionci * hall, afte> making such inquiry as he may consider necessary, submit his icport, in respect of wakfs existing at the date

oi the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:—

- (a) the number of wakfs in the State showing the Shia wakfe and Sunni wakfs separately;
 - (fa) the nature and objects of each wakf;
 - (c) the gross income of the property comprised in each wakf;

- (d) the amount of land revenue, cesses, rates and taxes payable in respect of each wakf;
- (e) the expenses incurred in the realisation of the income and the pay or other remuneiation of the mutawalli of each wakf; and
- (/) such other particulars relating to each wakf as may be prescribed.
- (4) The Suivey Commissioner shall, while making any inquiry, have the same powers as ait; vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

6 of 1908.

- (a) summoning and examining any witness;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record from any court or office;
- (d) issuing commissions for the examination of any witness or accounts;
 - (e) making any local inspection or local investigation;
 - (f) such other matters as may be prescribed.
- (5) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed.
- (6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of wakf properties in the State and the provisions of sub-sections (2), (3), (\bullet) and (5) shall apply to such survey as they apply to a survey directed under sub-section (2):

Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3).

Publication of list of wakfi.

- 5- (1) On receipt of a report under sub-section (3) of section 4. the State Government shall forward a copy of the same to the Board.
- (2) The Board shall examine the report forwarded t_o it under subsection (1) and publish in the Official Gazette a list of Sunni wakf or Phia wakfs in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

6. (1) li any question arises wh.ei.her a particular property specified as wakf property in the list of wakls is wakl properly or noi- or whether a wakf specified in such list is a Shia wakt or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision odi the Tribunal in respect of such matier shall be final:

Disputes regarding wakfs.

Provided '-hat no auch suit shall be entertained by the Tribunal after the expiry of one year from ihe date of the publication of the list of wakfs.

Explanation.—For the purposes of this section and section 7, the expression "any person interested therein', shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under section 4.

- (2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.
- (3) The Survey Commissioner shall not be made a party to any suit under sub-section (2) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.
- (4) The list of wakfs shall, unless it is modified in puisuanc_e of a decision or the Tribunal under sub-section (1), be final and conclusive.
- (5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (2).
- 7. (2) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mulawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such, property, for the decision of the question and the decision of the Tribunal thoreon shall be final:

Power of Tribunal to deters mine dispute regarding wakfg.

Provided that—

- (a) in the case of the list of wakfs ieiaung u> any part oi the State and published after the commencement QS. this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs; and
- (i) in the case of the list of wakfs relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application

may be entertained by Tribunal within lh_e period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

- (2) Except where the Tribunal has no juiisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any wakf shall be stayed by any court, tribunal or other authority by reason only of lhe pendency of any suit, application or appeal or other proceeding arising out of any such suit, application* appeal or other proceeding.
- (3) The Chief Executive Officer shall $_{no}t$ b« made a party to any application under sub-section (1).
- (4) The list of wakfs and where any such list is modified in pursuance of a decision of the Trjbunal under sub-section (I), the list as so modified, shall be final.
- (5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under jsub-seciioii (I) of secUon G, before the commencement of this Act or which is the subject-matter of any appeal from (he decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as ihe case may be.

TtecoverJ of costs of survey.

- 8. (1) The total cost of making a survey including the cost of publication of the list or lists of wakfs under this Chapter shall be borne by all the mutawalli of the wakfs the net annual income whereof exceeds five hundred rupees, in proportion to the net annual income accruing in the State to such wakfs, such proportion being assessed by the Survey Commissioner.
- (2) Notwithstanding anything contained in the deed or instrument by which the wakf was created, any mutawalli may pay from the income of the wakf any sum due from him under sub-section (1).
- (3) Any sum due from a mutawalli under sub-section <1) may, on a certificate issued by the State Government, be recovered from the property comprised in the wakf in the same manner as an arrear of land revenue.

CHAPTER III

CENTRAL WAKF COUNCIL

Establishment and constitution of Central Wak*

- 9. (1) For the purpose of advising it, on matters concerning the working of Boards and the due administration of wakfs, the Central Government may, by notification in ihe Official Gazette, establish a Council to be called the Central Wakf Council.
 - (2) The Council shall consist of—
 - (a) the Union Minister in charge of wakfs—ex officio Chairperson;
 - (6) the following members to be appointed by the Central Government from amongst Muslims, namely:—
 - (0 three persons to represent Muslim organisations having all India character and national importance;
 - (it) four persons of national eminence of whom two shall

be from amongst persons having administrLtivt and financial expertise;

- (Hi) three Membeis. of Pailiament of whom two shall be from the House of the People and one from the Council of **States:**
 - (iv) chairpersons of three Boaids by rotation;
- (v) two persons who have brcn Judges of the Supreme Court or a High Court;
 - (vi) one advocate of national eminence;
- (vij') one person to represent the mutaWallis of the wakf having a gross annual income of rupees five lakhs and above;
 - (viii) three persons who are eminent scholars in Muslim Law.
- (3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be presciibed by rules made by the Central Governifrflisht.
- 10. (1) Every Board shall pay from its Wakf Fund annually to the Council such contribution as is equivalent to one per cent, of the aggregate of the net annual income of the wakfs in respect (if which contribution is payable under sub-section (1) of section 72:

Finance of Coimcil.

Provided that where the Board, in (he case of any particular wakf has remitted under sub-section (2) of section 72 the whole of the contribution payable to it under sub-section (2) of that section, then for calculating the contribution payable to the Council under this section the net annual income of the wakf in respect of which such remission has been granted shall not be taken into account.

- (2) All monies received by the Council under sub-section 0) and all other monies received by it as donations, benefactions and grants shall form a fund to be called the Central Wakf Fund.
- (3) Subject to any rules that may be made by the Central Government in this behalf, the Central Wakf Fund shall be under the control of the Council and may be applied **for such** purposes as the Council may deem fit.
- 11. (1) The Council shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be prescribed by rules made by the Central Government.
 - s audit.
- (2) The accounts of the Council shall be audited and examined annually by such auditor as may be appointed by the Centr.il Government.
 - (3) The costs of the audit shall be paid from the Central Wakf Fund.
- 12. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide, for all or any of the following matters, namely:—
 - (a) the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, the members of the Council;
 - (b) control over and application of the Central Wakf Fund;
 - (c) the form- and manner in which accounts of the Council may be maintained

Accounts and audit.

Power of

Central

Government to

make

rules.

(5) Every rule made by the Central Government under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following, the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses' agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

CHAPTER IV

ESTABLISHMENT OF BOARDS AND THEIR FUNCTIONS

Incorporation.

- 13. (1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of Wakfs under such name as may be specified in the notification.
- (2) Notwithstanding anything contained in sub-Rection (1). if the Shia wakfs in any State constitute in number more than fifteen per cent, of all the wakfs in the State or if the income of the properties of the Shia wakfs in the State constitutes more than fifteen per cent, of the total income of properties of all the wakfs in the State, the State Government may, by notification in the Official Gazette, establish a Board of Wakfs each for Sunni wakfs and for Shia wakfs under such names as may be specified in the notification.
- (5) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

Composi-IJUQ erf Board.

- 14. (1) The Board for a State and the Union territory of Delhi shall consist of—
 - (a) a Chairperson;
 - (b) one and not more than two members, ail the State Government may think fit, to be elected from each of the electoral colleges consisting of—
 - (!) Muslim Members of Parliament from the State or, as the ctf5e may be, the Union territory of Delhi,
 - (\$) Muslim Members of the State Legislature,
 - (iii) Muslim Members of the Bar Council of the Slate, and
 - (iv) mutawallis of the wakfs having an annual income of rupees one lakh and above;
 - (c) one and not more than two members to be nominated by the State Government representing eminent Muslim organisations;
 - (d) one and not more than two members to be nominated by the State Government, each from recognised scholars in Islamic Theology:
 - (e) an officer of the State Government not below the rank of Deputy Secretary.
- (2) Election of the members specified in clause (b) of sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed:

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Provided ^Lhat where the number of Muslim Members of Parliament, lie Stale Legislature or the Sute Bar Council, as the ca&e may be, is only one, such Muslim Member shall be declared to have been elected on ^lhe Board:

rrovided further that where theie are no Mushin Members in any or the categories mentioned in sub-clauies (/) to {iii) of clause (6) of sub-secUon (1), the ex-Muslim Members of Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall constitute the electoral college.

- (3) Notwithstanding anything contained in this section, where State Government is satisfied, for reasons to be reeoided in writing, that it is WAL reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (ul) of clause (b) of SUD-section (J), the State Government may nominate such persons as the members of the Board as it deems fit.
- (4) The number of elected members of the Board shall, at all times, be more than the nominated members of the Board except as **provided** unaer sub-section (3).
- (5) Where there are Shia wakfs but no separate Shia Wakfs **Board** exists, at least one of the members from the categories listed in sub-section (1), shall be a Shia Muslim.
- (6) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia wakfs and Sunni wakfs to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.
- (7) In the case of the Union territory other than Delhi, the Board shall consist of not less than three and not more than five members to be appointed by the Central Government from amongst the categories of persons specified in sub-section (1):

Provided that there shall be one mutnwalli as the member of the Board.

- (8) Whenever the Board is constituted or re-constituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.
- (9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.
 - 15. The members of the Board shall hold office for a term of five years.

16. A person shall be disqualified for being appointed, or for continuing as, a member of the Board if—

- (a) he is not a Muslim and is less than twenty-one years of age;
- (6) he is found to be a person of unsound mind;
- (c) he la an undischarged insolvent;

Term of offico.

Disqualification for being appointed, or for continuing as, a member ot the Board.

- (d) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
 - (e) he has been on a previous occasion—
 - (i) removed from his office as a member or as a mutawaih, or
 - (*) removed by an order of a competent court or tribunal from any position of trust either for mismanagement or for corruption.

Meo'ings of the Board.

- 17. (J) The Board shall meet for the transaction of business at such time and places as may be provided by regulations.
- (2) The Chairperson, o^r in his absence, any member chosen by the members from amongst themselves shall preside at a meeting of the Board.
- (3) Subject to the provisions of this Act, all questions which come before any meeting of the Board shall be decided by a majority of votes of the members present, and in the case of equality oE votes, the Chairperson or, in his absence, any other person presiding shall have a second or casting vote.

Committees of the Board.

- 18. (i) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of wakfs.
- (2) The constitution, functions and duties and the term of office of such committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such, committees to be members of the Board.

Resignation of Chairperson and members.

19. The Chairperson or any other member may resign his office by writing under his hand addressed to the State Government:

Provided that the Chairperson or the member shall continue hi office until the appointment of his successor is notified hi the Official Gazette.

Removal of Chair-person and member.

- 20. (1) The State Government may, by notification in the Official Gazette, remove the Chairperson of the Board or any member thereof if he—
 - (a) is or becomes subject to any disqualifications specified in section 16; or
 - (b) refuses to act or is incapable of acting or acts In a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the wakfs; or
 - (c) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.
- (2) Where the Chairperson of the Board is removed under sub-section (1), he shall also cease to be a member of the Board.

Fillini of a vacancy.

21. When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be appointed In his place **and** such member shall hold office so long as tⁿe member whose

place he fills would have been entitled to hold office, if such vacancy had not occurred.

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22. No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect, in the constitution thereof.

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of the Board,

Appoint-

ment of

Executive Officer

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term of office and

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ditions of

Chief

- 23. (1) There shall be a Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, in consultation with the Board, by notification in the Official Gazette.
- (2) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.
- (3) The Chief Executive Officer shall be *ex officio* Secretary of the Board and shall be under the administrative control of the Board.
- 24. (2) The Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under this Act, details thereof shall be determined by the Board in consultation with the State Government.

Officers and other employees of tlie Hoaid,

- (2) The appointment of officers and other employees, their term of office and conditions of s'rWce shall be such as may be provided by regulations.
- 25. (1) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include—

Duties and powers of Chidf Executive Officer.

- (a) investigating the nature and extent of walcfs and wakf properties and calling whenever necessary, an inventory of wakf properties and calling, from time to time, for accounts, returns and information from mutawallis;
- (b) inspecting or causing inspection of wakf properties and account, records, deeds or documents relating thereto;
- (c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of wakfs.
- (2) In exercising the powers of giving directions under sub-section (1) In respect of any wakf, the Board shall act in conformity with the directions by the wakif in the deed of the wakf, the purpose of wakf and such usage and customs of the wakf as are sanctioned by the school of Muslim law to which the wakf belongs.
- (3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act.

Powers of Chief Executive officer in respect of ordeifc or resolutions of Board

- 26. Where the Chief Executive Officer considers ihat an order or resulution passed by 'he Board—
 - (o) has not been passed in accordance with the law; or
 - (b) is in excess of or is an abuse of the powers conferred on the Board by or under this Act or by any other law; or
 - (c) if implemented, is likely to—
 - (/) cause financial loss to the Board or to the concerned wakf or to the wakfs generally; or
 - (IJ) lead to a riot or reach of peace; or
 - (Hi) cause danger to human life, health or safety; or
 - (d) is noL beneficial to the Board or to any wakf or to wakfs generally,

he may, before implementing such order or resolution place the matter before the Board for its reconsideration and, if such order c^ resolution is not confirmed by a majority of vole of the members present and voting after such reconsideration, refer the matter to the State Govrernment along with his objections to the order or resolution, and the decision of the State Government thereon shall be final.

Delegation of powers by the Board. 27. The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the secretary or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary.

Chief Executive Officer to wterciie powei_s through Collector, etc.

- 28. (1) Subject to the provisions of tills Act and of the rules thereunder, the Chief Executive Officer may exercise all or any of the powers conferred on him by or under this Act with the previous approval Board through the Commissioner of t^he division of the the Collector of the district in which the concerned wakf or property is situated or through any other Gazetted Officer whom he may appoint for such purpose and may, from time to time, delegate any of his powers, to any such Commissioner of the division or Collector or any other Gazetted Officer and may, at any time, revoke the delegations so by him.
- (2) Where any delegation of powers Is made by the Chief Executive Officer under sub-section (2), the person to whom such delegation is made may exercise those powers in the same manner and t_0 the same extent as if they have been conferred on him directly by this Act and not by way of delegation.

Powers of Chief Executive Officer io inspect records, registers «tc 29. The Chief Executive Officer or any officer of the Board dulv authorised by him in this behalf shall, subject to such conditions and restrictions as may be prescribed and subject to the payment of stich fees as may be leviable under any law for the time being in force, be entitled at all reasonable time to inspect, in any public office, any records, registers or other documents relating to a wakf or movable or immovable properties which are wakf properties or are claimed to be waVf proprrt>c.

JnsrKM?» rion of records.

30. (I)'The Board may allow inspection of its proceedings or other records in its custody and issue copies of the same on payment of such fees and subject to such conditions as may be prescribed.

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- (2) All copies issued under this section shall be certified by the Chief Executive Officer nt the Board in the manner proWcVd in section 76 oJ the Indian Evidence Act, 1S72.
- (3) The powers conferred on the Chief Executive Officer by subsection (2) may be exercised by such other officer or officers of the Board as may either generally or specially be authorised in this behalf by the Board.
- 3J. It is hereby declared that the offices of the Chairperson or members of a Board shall not be disqualified and shall be deemed never to have been disqualified for being chosen as, or for being, a Member of Parliament.

Prevention ≯f diaquali-

for mcfubi-v-

Parliament.

32. (I) Subject to any rules that may be made under this Act, the general superintendence ot all wakfs in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:

Powers and function of tho Board.

Provided that in exercising its powers under this Act in respect of any walcf, the Board shall act in conformity with the directions oi the watt, the purposes of the wakf and any usuge or custom of the wakf sanctioned by the school of Muslim law to swhich the wakf belongs.

Explanation.—VOT the removal of doubts, it is hereby declared that in this sub-section, "wakf" includes a wakf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

- (2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be—
 - (a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every wakf;
 - (ft) to ensuie that the income and other property of wakfs arc applied to the objects and for the purposes for which such wakfs were intended or created;
 - (c) to give directions for the administration of wakfs;
 - (d) to settle schemes of management for a wakf:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

- (e) to direct—
- (0 the utilisation of the surplus income of a wakf consistent with the objects of a wakf;
- (//) in what manner the income of a wakf, thd objects of which are not evident from any written instrument, shall be utilized;

(/it) in any case where any object of wakf has ceased to exist or hat, become incapable of achievement, that so much of the income of the wakf as was previously applied to that object shall be applied to any other object, which shall be similar, ot nearly similar or to the original object or for the benefit of the poor or i'or the purpose of promotion of knowledge and learning in the Muslim community:

Provided that no duccuon shall Ve given under this clause without giving the parties aflected an opportunity of being heLrd.

Explcination.—For the purposes of this clause, the powers of the Board shall be exercised—

- (0 ia the case of a Sunni wakC, by the Sunni members of the Board only: and
- (//) in the case oC a Shia wakf. by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears tb the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Symnis or Shias, as the case may be, as it thinks fit. to be temporary members of the Board for exercising its powers under this clause;

- (/) to scrutinise and approve the budgets submitted by niutawallis and to arrange for the auditing of account of wakfs;
- (g) to appoint and remove mutawallis in accordance with the provisions of this Act;
- (/i) to take measures for the recovery of lost properties of any wakf:
 - (0 to institute and defend suits and proceedings relating to wakfs;
- (j) to sanction any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange or lease, in accordance with the provisions of this Act:

Provided that no such sanction shall be given unless at least twothirds of the members of the Board vote in favour of such transaction:

- (A;) to administer the Wakf Fund;
- (0 to call for such returns, statistics, accounts and other information from the mutawallis with respect to the wakf property as the Board may. from time to time, require;
- (m) to iraspect, or cause inspection of, wakf properties, accounts, records or deeds and documents relating thereto;
- (n) to investigate and determine the nature and extent of wakf and tfakf propterty, and to cause, whenever necessary, a survey ox suc.b waTtf property;

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- (o) generally do all such ads as may be nece.*viry for the control, maintenance and administration of wakfs.
- (3) Where the Board haw settled any scheme of management uuJcr clause (d) or given any direction under clause (e) of sub-section (2). ;my perou interested HJ the wakf or affected by such settlement or direction rmy institute a suit in a Tribunal for setting aside such sctUt-ncnt or directions ;iud the decision of the Tribunal thereon sh;iii be final.
- (4) Where the Board is sujsfted that any wakf laud, which t, <> wakf property, offers a feasible potential for development as -a shopping venire, market, housing flats and the like, it may seive upon the mutuwalli of the concerned wakf a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.
- (5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the tnutawalli is not 'wijUing or is not capable of 'executing the works required to be executed in terms of the notice, it may_s with the prior approval of the Government, take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute micli works from Wakf funds or from the finances which may be raised on the security of the properties of the wakf concerned, and control and manage the properties till such time as all expenses incurred by the Board under this section, together with, interest thereon, the expenditure on maintenance of such works and other legitimate changes incurred on the property are recovered from the income derived from the property.

Provided that the Board shall compensate annually the mutawalli of the concerned wakf to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.

- (6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned wakf.
- 33. (I) With a view to examining whether, by reason of any failurj or negligence on the part of a mutawalli in the performance of his executive or adroinsitrative duties, any loss or damage has been caused to any wakf or wakf property, the Chief Executive Officer with the prior approval of the Board, either himself or any other person authorised by him in writing in this behalf, may inspect all movable and immovable properties, which are Wakf properties, and all records, correspondences, plans, accounts and other documents relating thereto.

Puwov of inspection by Chief Executive Olticur ot pci fotii auihoniccJ' "y him.

(2) Whenever any such inspection as referred to in sub-section (1) is made, the concerned mbtawaHi and all officers and other employees working under him and every person connected with the administration of the wakf, shall extend to the person making such inspection, all such assistance and facilities as may be necessary and reasonably required by him to carry out such inspection, and shall also produce for inspection any movable property or documents relating to the wakf as may be called for by the person making the inspection and furnish to him such information relating lo the wakf ns may be required by him.

- (3) Where, alter any such inspection, it appears that the concerned nwta-walli or any officer or other employee who is or was working under him had mis-appropriated, misapplied or fraudulently retained, any money or other wakf property, or had incurred irregular, unauthorised or improper expenditure from the funds of the wakf, the Chief Executive Officer may, after giving the mutawalli or the person concerned a reasonable opportunity of showing cause why an order for the recovery of the amount or property, should not be passed against bim and after considering such explanation, if any, as such person may furnish, determine the amount or the property, which has been mis-appropriated, misapplied or fraudulently retained, or the amount of the irregular, unauthorised or improper expenditure incurred by such person, and make an order directing such person to make payment of the amount so determined and to restore the said property to the wakf, within such time as may be specified in the order.
- (4) A mutawalli or other person aggrieved by such order may, within thirty days of the receipt by him of the order, appeal to the Tribunal:

Provided that no such appeal shall be entertained by the Tribunal unless the appellant first deposits with the Chief Executive Officer the amount which has been determined under sub-sectoin (3) as being payable by the appellant and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3).

- (5) The Tribunal may, after taking •uch evidence os it may think fit, confirm, reverse or modify the order made by the Chief Executive Officer! under sub-section (3) or may remit, either in whole or in parti the amount specified in such order and may make such ordens as to costs as it may think appropriate in the circumstances of the case.
- (6) **The** order made by the Tribunal under sub-section (J) shall be final.
- 34. Where any mutawalli or other person who has been ordered, whether under sub-section (3) or sub-section (5) of section 33, to make any payment or to restore the possession of any pioperty, omits or fails to make such payment or restoration within the time specified in such order, the Chief Executive Officer. with the prior approval of the Board shall, take such; steps as he may think fit for the recovery of possession of the property aforesaid and shall also send a certificate to the Collector of the district in which the property of such mutawalli or other person is situate, stating therein the amount that has been determined by him or by the Tribunal, as the case may be, under section 33, as being payable by such mutawalli or other person, and, thereupon, the Collector shall recover the amount specified in such certificate as if it were an flrrear of land revenue and on the recovery of such amount, pay the same to the Chief Executive Officer, who shall, on receipt thereof, credit the amount to the funds of the concerned wakf.
- 35. (1) Where the Chief Executive Officer is satisfied that the mutawalli or any other person who has been ordered under sub-section (3) or subsection (5) of section 33 to make any payment, with intent to defeat or delay the execution of the said order,—
 - (a) is about to dispose of the whole or any part of his property; or

Recovery oi the amount dc-ronnined under section 33

Conditional attachment by Tribunal,

(/>) is about to remove the whole or any part of his property from the jurisdiction of the Chief Executive Officer,

he may, with the prior approval of ihc Board, apply to the Tribunal for the conditional attachment of the said propeit\(\) or such part thereof, as he may think necessary.

- (2) The Chief Executive Officer shall, unless the Tribunal otherwise directs, specify hi the application the properly required to be attached and the estimated value thereof.
- (3) The Tribunal may direct the tnutaw; illi cr the person concerned, as the case may be, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the amount specified in the certificate referred to in section 34, or to appear and show cause why he should not furnish such security.
- (4) The Tribunal may also *in* the order direct the conditional attachment of the whole or any portion of the property so specified.
- (5) Every attachment made under this section shall be made in accordance with the provisions of the Code of Civil Procedure, 1908, as if it were an order for attachment made under the provision of the said Code.

CHAPTER V

REGISTRATION OF WAKFP

ment RegiMni-

- 36. (1) Every wakf, whether created before or after the cyminch cernent of rhis Act. shnil 'x? registered at the office of the Board.
 - (2) Application for registration shall be made by the mutawalli:

Provided that such applications may be made by the wakf or his dctcc, T;i:its or ;i beneficiary of ihc wakf or any Muslim belonging to the sect to which the wakf belongs.

- (J) An application for registration shdJ] be made in such form and manner and at such place as the Board may by regulation provide and shall contfijii fallowing particulars:—
 - (a) a description of the wakf properties sufficient for tbc identification thereof;
 - (b) the gross annual income from such properties;
 - (c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the wakf properties;
 - (d) an estimate of the expenses annually incurred in the realisation of the income of the wakf properties;
 - (e) the amount set apart under the wakf for-
 - (0 the salary of the mutawalli and allowances to the individuals;
 - (it) purely religious purposes;
 - (Hi) charitable purposes; and

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- (iv) any other purposes;
- (/) any other particulars provided by the Board by regulations,
- (4) Every Mich application shall be accompanied by a copy of the wakf deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakf.
- (5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 for the signing and verification of pleadings.

5 erf 1908.

- (6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.
- (7) On receipt of an application lor registration, the Board may, before the registration of the wakf make such, inquirieo as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the wakf proprety? the Board bhall, before legistering the wakl, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.
- (8) In the case of wakn created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the casu of wakfs created after such commencement, within three months from the date of the creation of the wakf:

Provided that where there is no board at the time of creation of a wakf, such application will be made within three months from the date of establishment of the Board.

- 37. The Board shall maintain a register of wakfs which shall contain m iet-peci of each wakf copies of the wakf deeds, when available and the following particulars, namely:—
 - (a) the class of the wakf;
 - (b) the name of the mutawalli;
 - (c) the rule of succession to the office oE mutawalli under the wakf deed or by custom or by usage;
 - (d) particulars of all wakf properties and all title deeds and documents relating thereto;
 - (e) particulars of the scheme of administration and ¹he scheme of expenditure at the time of registration;
 - (/) such other particulars as may be provided by regulations.
- 38. (1) Notwithstanding anything contained in this Act, the Board may, if it is of the opinion that it is necessary so to do in the interests of the wakf, appoint on whole-time or part-time basis or in aij honorary capacity, subject to such conditions as may be provided by regulations, an Executive Officer with such supporting staff as it considers necessary for any wakf having a gross annual income of not le?g than five lakhs rupees:

of wsikfs.

Powers of Board to appoint Executive Officer. Provided chat the person chosen ioi appointment should be a person pioiesaing Islam.

interpretation of the second o

(2) Every Executive Officer appointed under subsection (1) shall exercise such powers and discharge such duties a_s peu_ain only 10 the administration of the pioperity of the wakf for which he has been appointed and shall exercise those powers and discharge those duties under the direction, control and supervision of the Board:

Provided that the Executive Officer who is appointed for a wakt having a gross annual income of not less than five lakhs rupees shall ensure that the budget of the wakf is submitted, the accounts of the waM are regularly maintained, and the yearly sUUc-ment of accounts are submitted, within such time as 'he Board m;iy specify.

- (3) While exercising his powers and discharging his Itinctioas under sub-section (2), the Executive Officer shall not interfere with any religious duties or any usage or custom of the wakf sanctioned by the Muslim law.
- (4) The salaries and allowances of the Executive Officer and his star? shall be fixed by the Board and in fixing the quantum ot such salaty *fae* Board shall have due regard to ih_e income of the wakf, i'he extern jnd nature of the duties of the Executive Officer and shall also ensure that thL amounts of such salaries and allowances are noi disproportionate i« the income of the wakf and do not operate a-, an tmnecps-arv financial burden on U.
- (5) The salaries and allowances of the Executive Officer and his staff shall be paid by the Board from the Wakf Fund and, if the wakf genera-res any additional income as a result *ut* appointment of the Executive Officer, the Board may claim reimbursement of amounts spent on the salaries and allowances from the fund of the wakf concerned.
- (6) The Board may, for sufficient reasons, and uft-ei giving to the Executive Officer or a member of his staff, a reasonable opportunity of being heard, suspend, remove or dismi H 'he Executive Officer or a member of his staff from his post.
- (7) Any Executive Officer or a member of his-staff who is aggrieved by any order of removal 01 dismissal made under sub-sect «n (6) may. within thirty days from tiV dnfc of communication of the order piefer an appeal against the order to the Tribunal and the Tribunal may, after considering such representation as the Board may make in the matter .md after giving a reasonable opportunity to the Executive Officer or .1 member of his staff of being heard confirm, modify or reverse the order.
- 39. (H The Board shall, if it is satisfied that the objects or any pan thereof, of a wakf have ceased to exist, whether such cesser look plaerbefore or after the commencement of this Act cause an inquiry to be held by the Chief Executive Officer, in the prescribed manner, to ascertain the properties and funds pertaining to *fueh*. wakf.

Powers nf li'Uirf in relation lowafcn. which have ceased lo exi«;t.

- (2) On the receipt of the report of inquiry of the Chief Executive Officer, the Board shall pass an otder—•
 - (a) s-pecifyins the property and funds of such Wakf,

- (b) directing that any property or funds pertaining to such wakl which have been recovered shall be applied or utilised for the renovation of any wakf property and where there is no need for making any such renovation or where utilisation of the funds for such renovation is not possible, be appropriated, to any of the purposes specific in sub-clause $(\pounds//)$ of clause (e) of sub-section (2) of section 32.
- (3) The Board may, if it has reason to believe that any building or other place which was being used for religious purpose or instruction or for charity has, whether before or after the commencement of this Act, ceased to be used for that purpose, make an application to the Tribunal for an order directing the recovery of possession of guch building or other place.
- (4) The Tribunal may, if it is satisfied, after making such inquiry as it may think fit, that such building or other place
 - fa) is wakf property;
 - (b) has not been acquired under any lciw for the time being in force relating to acquisition of land or *is* not under any process of acquisition under any such law, or has not vested in the State Government under any law for the time being in force relating to land reforms; and
 - (c) is not in the occupation of any person who has been authorised by or under any law for the time being in force to occupy such building or other place, make an order—
 - (i) directing the recovery of such building or place from any persoi who may be in unauthor'sed possession thereof, and
 - (ii) directing that such property, building or place be used for religious purpose or instruction as hefore, or if such use is not possible, be utilised for any purpose specified in sub-clatise (iii) of clause O) of sub-section (2) cf section 32.

Decision if a property. i_s wakf property

- 40. (1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf it may, after making such inquiry as it may deem fit, decide the question.
- (2) The decision of the Board on a question under sub-section (/) shall, unless revoked or modified by the Tribunal, be final.
- (3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 or under the Societies Registration Act, 1860 or under any other Act, is wakf property, the Board may notwithstanding anything contained in iuch Act. hold an Inauirv in regard t₀ such property and If after such inquiry the Board *is* satisfied that such property is wakf property,

201 1882 21 of 1860. call upon th© trust or society, as ihe case may be, either to register such property under this Act as wakf property or show cause why such property should not be so registered;

Provided that in all such cases, notice of the action proposed to be taken under thi; j sub-section shall be given to the authority by whom the trust or society had been registered.

- (4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such Orders as it may think fit and the order so made by the Board, shall be final, unless it Is revoked or modified by a Tribunal.
- 41. The Board may direct a mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may itself cause the wakf to he registered or may at any time amend the register of wakfs.

to cause registration ol wakf and to amend register. Change in the management uf wakfs rt>be

notified.

Power

- 42. (1) In the cit3 of any change in the management of a registered wakf due to the de&ih ot retirement or removal of the mutawaUi, the incoming muuwalH ihall foithwith. and any other person may notify the change to fhe Poard.
- (2) In the case of any other change in any of the particulars mentioned in section 36, the mufawalli shall, within three months from the occurrence of the change, rotily such change to the Board.
- 43. Notwithstanding anything contained in this Chapter, where any wakf has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the wakf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act.

Wakfs registered before the commencement of this Act deemed to bo registered.

CHAPTER VI

MAINTENANCE OF ACCOUNTS OF WAKFS

44. (1) Every muiawalli if a wakf shall, in every year prepare, in such form and at such time as may be prescribed, a budget in respect of the-financial year next ensuing showing the estimated receipts and expenditure during that financial year.

Budget.

- (2) Every such budget shall be submitted by the mutawalli jitleast ninety days before the beginning of the financial year 10 the Board ind shall make adequate provision for the following:
 - (/) for carrying out the objects of the wakf;
 - (if) for the maintenance and preservation of the wakf property;
 - (HI) for the discharge of all liabilities and subsisting commitments binding on the wakf under this Act or any other law for the time being in force.
- (3) The Board may cive such directions for making alterations, omissions or additions in the budget as it may deem fit, consistent with the objects of the wakf and the provisions c^* that Act.

(4) If in (he course of the financial year the mutawalli linds it neces sary to modify the provisions made in the budget in regard to the receipt or to the distribution of the amounts to be expended under the different heads, he may submit to the Board $_{\rm a}$ supplementary or a revised budget and the provisions of sub-section Q) shall, as tar as m.tv be. apply to such supplementary or revised budget.

Piepai Jtion of budget of •wdkis under dhect management of the Board.

- 45. (1) The Chief Executive Officer shall prepare, in such form and at *uch time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure for each of the wakfs under the direct management of the Board, showing therein the estimated receipts and expenditure and submit it to the Board for its approval.
- (2) While submitting the budget under sub-section (I), the Chief Executive Officer shall also prepare statement giving details of the increase, if any, in the income of each wakf under the direct management of the Board and the steps which have been taken for its better management and the results accruing therefrom during the year.
- (3) The Chief Executive Officer shall keep regular accounts and be responsible for the proper management of every wakf under the direct management of the Board.
- (4) Every budget submitted by the Chief Executive Officer under subsection (1) shall comply with the requirements of section 46 and, for this purpose, references therein lo the niutawalli of the wakf shall be construed as prereferences to the Chief Executive Officer.
- (5) The audit of accounts of every wakf under the diicct management of the Board shall be undertaken by the State Examiner of Local Funds or any other officer appointed by the State Government for this purpose, irrespective of the income of the wakf.
- (6) The provisions of sub-sections (2) and (3) of section 47 and the provisions of sections 48 and 49 shall, in so far as they are not inconsistent with the provisions of this section, apply to the audit of accounts referred to in this section.
- (7) Where any wakf is under the direct management of the Board, such administrative charges as may be specified by the Chief Executive Officer shall be payable by the wakf to the Board:

Provided that the Chief Executive Officer shall not collect more than ten per cent, of the gross annual income of the wakf under the direct management of the Board as administrative charges.

- 4fi. (2) Every mutawalli shall keep regular accounts.
- (2) Before the 1st day of May next, following the date ou which the application referred to in section 36 has been made and thereafter before the 1st day of May in every year, every mutawalli of a wakf shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be provided by regulations by the Board, of all moneys received or expended by the mutawalli on behalf of the wakf during the period of twelve months ending on the 31st day of March, or, as the case may be, during that portion of the said period during which the provisions of this Act, have been applicable to the wakf:

Provided that the date on which the annual accounts arc to be dosed male be varied at the discretion of the Board.

Submission of JCCOU11L, of i\:ikfs

47. (1) The accounts of wakls submitted to i-he Board under section 45 shall be audited and examined in the iollowing manner namely:

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- (a) in the case of a wakf having no income or a net annual income not exceeding ten thousand rupees, the submission of a statement of accounts shall be a sufficient compliance with the provisions of bection 46 and the accounts of two per cent of such wakts ,hall be audited annually by an audiior appointed b\ the Board;
 - (b) the accounts of the wakf having net annual income exceeding ten thousand rupees shall be audited annually, of at such other intervals as may be prescribed, by an auditor appointed by the Board from out of the panel of auditors prepared by the State Government and while drawing up such panel of auditors, the Stale Government shall specify the scale of remuneration of auditors,
 - (c) the State Government may, at any time cause the account of any wakf audited by the State Examiner of Local Funds, or by an other officer designated tor that purpose by that State Government,
- (2) The auditor shall submit his leport to the Boaul and the leport of tbc auditor shall among otherthings, specif all cases of ineyulai, illegal oi improper expenditure or of failure to recover money oi other property caused by neglect or misconduct and any other matter—which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is—responsible for—such expenditure or failure and the auditor shall in every such case certify the amount of Mich expenditure or loss as due from such person
- (3) The cost of the audit of the ,in.onnK oi . wtkl shall be met from the funds of that wakf:

Provided that the remuneration of the auditors appointed from out of the panel drawn by the State Government in relation to wakfs having a net annual income of more than ten thousand runces but less than fifteen thousand rupees shall be paid in accordance with the scale of remuneration specified by the State Government under $c \cdot la \cdot w \cdot (c)$ of sub-section CV

Provided further that where the audit of the accounis of an wakf is made by the State Examiner of Local Funds or any other officer designated by the State Government in this behalf, the cost of such audit shall not exceed one and a half per cent, of the net annual income of such wakf and such costs shall be mef from the funds of the wakfs concerned

Boaid to pass Orders on sudi tor'R ' eport.

- 48. (J) The Board shall examine the auditor's report, and may call for the *explanation of any person in regard to any matter mentioned therein, and shall pass such orders as it thinks fit including orders for the recovery of the amount certified by the auditor under sub-section (2) of section 47.
- (2) The mutawaUi or any other person aggrieved by any order made by the Board may, within thirty days of the receipt by him of the order, apply to the Tribunal to modify or set aside the ord^r and the Tribunal may, after taking such evidence as it may think necessary, confirm or modify the order or remit the amount so CLI lifted, either in whole or in part, and may also make such order as to costs as it may think appropriate in the circumstances of the case.
- (3) No application made under sub-section (2) shall be entertained by the Tribunal unless the amount certified by the auditor under sub-section (2) of section 47 has first been deposited in the Tribunal and the Tribunal shall not have any power to stay the operation of the order made by the Board under sub-section (1).
- (4) The order made by the Tribunal under sub-section (2) shall bestinal.
- (5) Every amount for the recovery of which any order h is been made under sub-section (2) or sub-sectioo (2) shall, where such amount remains unpaid, be recoverable in the manner specified in section 34 or section 35 as if the said order were an order for the r,c>>>very of any amount determined under sub-section (3) of section 35.

Sums certified to be due rccoveruWle as arrears of land revenU₂

- 44. (I) Every sum certified to be due from any person by an auditor hi his report under section 47 unless such certificate is modified or cancelled by an order of the Board or of the Tribunal made under section 48, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Board.
- (2) If such payment is not made in ac^uddiKo with the provisions of sub-section (1), the sum payable may, on :i certificate K, wd by the Boaid after giving the person concerned Lin 'ppouinity 'f being h^ard, be recovered hi the same manner as an arreai of 1 inO revenue.

Duriesof muiawalli.

- 50. It shall be the duty of every mutawalli—
- (a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;
- (b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;
- (c) to allow inspection of wakf properties, accounts or records jr deeds and documents relating thereto;
 - (d) to discharge all public dues; and
- (e) to do any other act which he is lawfully required to do by or under this Act.

51. (/) Notwithstanding anything contained m the which deed, any gift, salr, or exchange mortgage of any immovable property which is wakf property, shall be void unless such gift, sale, exchange or mortgage is effected with the prior sanction oC the Board:

Provided that no mosque, dargah or tliangah shaU be gifted, sold, exchanged or mortgaged except in accordance with any law for the time being in force.

- (2) The Board may, after publishing in rhc Official Gazette, the particulars relating to the Lransactic/i referred to in sub-section (1) and inviting any objections and suggestions with resp^'i thereto and considering all objections and suggestions, if any, that may be received by it from the concerned mutawalli or any other person interested in the wakf, accord sanction to such transaction if it is of opinion thaf such transaction is—
 - (/) necessary or beneficial to the wakf;
 - <ii) covisisient with the objects of the wakf;
 - (///) the consideration thereof is reasonable and adequate:

Provided than the tale of a by property sanctioned by the Board shall be effected by public auction and shall be subject to confirmation by the R tard within such time is may be prescribed:

Provided further that the Tribunal may, on the application of the aggrieved mutawalli or other person, for reasons to be recorded by it In writing, permit such sale to be made otherwise than by public auction, if it is of opinion that it is necessary so to do in the inicrest of the wakf.

- (3) The utilisation or investment of the amount realised by the sale or exchange mortgage of any property shall be made by the mutawalli subject to the approval of the Board, and where any amount has been raised by mortgage of any such property, the mutawalli or other person shall make repayment of the mortgage-debt and obtain a discharge of the mortgage-debt from the mortgage within such reasonable time as the Board may specify.
- (4) Every approval given by the Board under sub-section (3) shall be communicated to the mutawalli and shall also be published in the manner prescribed.
- (5j The mutawalli or any other person having an interest in the wakf who is aggrieved by the decision given under sub-section (3), may, within ninety days from the date of communication to him of such decision or the publication of the decision, as the case may *hi*, prefer an appeal to the Tribunal against such decision, find, thereupon, the Tribunal may, after giving the appellant and the Board, a reasonable opportunity of being heard, confirm, modify or set aside such decision.
- 52. (1) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a wakf entered as such in the register of wakf maintained under section 36, has been transferred without the previous 'emction of the Board in contravention of the provisions of section 51, it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.
- (2) On receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the dite of the service of the order.

Miena-Iion of wakf property without •^nciion of Board to lie ^1&

Recovery of wakf property transferred in contravention of ¹c;ction51. (3) Every order passed under subjection (2) shall be served—

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- (a) by giving or tendering the order, or by sending it by post to the person for whom it is intended; or
- (b) if such person cannot be found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some adult male member or servant of his family or by causing it to be alii\ed on some conspicuous part of the property to which it relates:

Provided that where the person on whom the order is to be served, is a minor, service upon his guardian or upon any adult male member or servant of liis family shall be deemed to be the service upon the minor.

- (4) Am person aggrieved by the order c' the Collector under sub-scclion (2) may, within a period of thir: duvs from the 'Jate of the service of the order, prefer an appeal to the Tribunal within whose jurisdiction the property is situate and the decision of the Tribunal on such appeal shall be final
- (5) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any. preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any. as may be necessary for the purpose and deliver it to the Board.
- (6) In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations.

Restriction an

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53, Notwithstanding anything contained in a wakf deed, no immovable property shall be purchased for or on behalf of any wakf from the funds of any wakf except with the prior sanction of the Board, and the Board shall not accord such sanction unless it considers that the acquisition of such property is necessary or beneficial to the wakf and that the price proposed to be paid therefor is adequate and reasonable:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in the Official Gazette inviting objections and suggestions with respect thereto rind, the Board shall, after considering the objections and suggestions that may be received by it from mutawallis or other persons interested in the wakf, make such orders as it may think fit.

Removal of encroachment from wakf property. 54. (1) Whenever the Chief F. Peoutive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is waVf property and. which has been registered as such under this Act, he shall cause to be served upon the encroacher a nolice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

- (2) The notice referred to in sub-section (i) shall be served in such manner as may be proscribed.
- (3) If, after considering the objections, received during the period specified in the notice, and after conducting; an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.
- (4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property:

Provided that no such suit shall Iv instituted by *a* person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the muLawulli of the wakf or by any other person' authorised by him in this behalf.

55. Where the person, ordered under sub-section (3) of section 54 to remove any encroachment, omits or tails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Chief Executive Officer may apply to the Sub-divisional Magistrate within the local limits of whose jurisdiction the land, building, space or other property is situated for evicting the encroacher, and, thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property and to deliver possession thereof to the concerned mutawalli and in,default of compliance with the ordelr, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.

Imfoi cement of order, made under section 51

56. (1) A lease or sub-lease for any period exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, *ha* void and of no effect.

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- (2) A lease or sub-lease for a period exceeding one year and not exceeding three years W immovable property which is wakf property shall, not withstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.
- (3) The Board shall, in granting sanction for lease or sub-lease, or renewal thereof under this section review the terms and conditions on which the lease or sub-lease fa proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions n such manner ns it may direct.

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walll entitled lopay certain costs from income of wakf property.

57. Notwithstanding anything con dxncd in the wakf deed, every mutawalli may pay from the income of the wakf property any expenses properly incurred by him for the ptupose of enabling him to furnish any particulars, documents or copies under section 3tf or any accounts under section 46 or any information or documents required by the Board or for the purpose of enabling him to carry out the directions of the Board.

Power οf Board 10 pay dues incase of default by nnitav ;41i.

- 58. (2) Where a mutawalli refuses ^o pay or fails t₀ pay any revenue, cess, rates or taxes due to the Government or any local authority, the Board may discharge dues from the Wakf Fund and may recover the amount so paid from the wakf property and may also recover damages not exceeding twelve and a half per cent, of the amount so paid.
- (2) Any sum of money due under sub-section (/) may, on a certificate issued by the Board after giving the mutawaUi concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

reserve fund.

59. For the purpose of making provisions for the payment of rent and of revenue, ces3, rates and taxes dtic to the Government or any loc«l authority, for the discharge of the expenses of the repair of the wakf properly and for the preservation of the wakf propei'y, ibe Bonrd may direci the creation and maintenance, in such manner $a \Rightarrow h$ may think fit, of E reserve fund from the income of a wakf.

Extension of time

60. The Board may, if it is satisfied that it is necessary so to do, extend the time within which any act is required to be done by the mutawaUi under this Act.

Penaltiw.

- 61. (1) If a mutawalli fails to—
 - (a) apply for the regdstration of a wakfs;
- (b) furrish statements of parriculirji or acrounts or returns a« required under this Act;
 - (c) supply information or particulars as required by the Board;
- (d) allow inspection of wakf properties, account, records or deeds and documents relating thereto;
- (c) deliver possession of any wakf property if ordered by the Board or Tribunal;
 - (/) carry out the directions of rhe Board;
 - (g) discharge any public dues; or
- (h) do any other ad which he is lawfully required »o dr, h* or under this Act,

he shall, unless he satisfies the court or the Tribunal that there was reasonable cause for his failure, be punibhable with fine which may extend io eight thousand rupees.

- (2) Notwithstanding anything contained in sub-section (1), if—
- (a) a nvutawalli omits or fails, with a view tQ concealing the existence of a wakf, to apply for its registration under his Act,—
 - (i) m the case of a wakf created before the commencement of this Act. within the periorl specified therefor in sub-section (8) of section 36;
 - (ii) in the case of any wakf created atter such commencement, within three months from the date of the creation of the ^akf; or

(M a mutawulli furnishes any statement, relurn or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular,

he shall he punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand ^upees,

- (3) No court shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer duly authorised by the Board in this behalf.
- (4) N_o court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.
- (^r>) Notwitlistanding anything contained in the Code of Criminal Procedure, 1973, the fine imposed tirder sub-section (1), when realised, .nhall be credited to the Wakf Fund.
- (6) In every case where offender is o nvicteii pfte* the commencement of this Act. of an offenc« punishable under sub-section (7) nnd sentenced to a fine, the court shall nlso impose such term of imprisonment in default of payment of fine ≯ i^ it'll orisert by law for G⊁ default.
- 62. No mulawalli shall spend any money out of the funds of the walcf, of which he is the mutawalli, for meeting any costs, charges, or expenses which are or may be, incurred by him, iv relation to any suit, appeal or iny other proceeding for, or Incidental to, his removal from rfp \ll oi for taking any disciplinary action against himself

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63. When there is a vacancy m ihe office oJ the niutawalli of a walu and there is no one to be appointed under the terms, of the deed uf the wakf, or where the right of any person to aci as inutawalli is disputed, the Board may appoint any person iu act as mutawalh lor i.uch period and on such conditions as it ma> ihink fii.

Ren. JVJ1 of MuiawalU.

- 64. (1) Notwithstanding anything contained in any other law or the deed of wakf, the Board may remove a mutawalli from his office if such mutawalli—
 - (a) has been convicted more than 'nce of an offence punishable under section 61; or
 - (.b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or
 - (c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or
 - (d) is an undischarged insolvent; or
 - (e) is proved to be addicted to drinking liquor or o'her spirituous preparations, or is addicted to the taking of any narcotic drugs; or
 - (/) is employed as a paid legal practitioner on behalf of, or against, the wakf; or
 - (g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or
 - (h) is interested, directly or indirectly, in a subsisting lease in respect of any wakf property, or in any contract made with, or any work being done for, the wakf or is in arrears in respect of any sum due by him to such wakf; or
 - (i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trusc in relation to the wakf or in respect of any money or other wakf property; or
 - (j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;
 - (7c) misappropriates or fradulently deals with the property of the wakf.
- (2) The removal of a person from the office of the mutawalli shaH not affect his personal rights, if any, in respect of the wakf property α wilher us a beneficiary or in any other capacity α his right, if any, as a sajjadanashin.

- (3) No action shall be taken by the Board under sub-section (i), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a niuyrHj of noI Jess than two-thirds of the members of the Board.
- [4] A mutawalli who is aggnevtd by an <ird passed under any of the clauses (c) to (i) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to '-he TriVunal and the decision of the Tncnnaj o:. .uch appeal shall be final.
- (5) Where any inquiry under sab-section (3) is proposed, or commenced, against any mutawalli, the Board may, f L is of opinion that jt is necessary so to do in the interest of the wakf, by an order suspend such muiawalli until the conclusion of ihe inquiry:

Provided that no suspension for a period exceeding ten uays shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

- (6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section $(4)_t$ the Board may make an application to the Tribunal for the appointment of a receiver t_0 manage the wakf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, appoint a suitable person as receiver to manage the wakf and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the wakf are safeguarded.
- (7) Where a mutawalli has been removed from his office Under subsection (/), the Board may, by order, direct the mutawalli to d-eliver possession of the wakf property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to acl as the mutawalli of the wakf property.
- (8) A mutawalli of a wakf removed from his office under this section shall not be eligible for re-appointment r.s a mutawalli of that wakf for a period of five years from the date of such removal.
- G5. (1) Where no suitable person is available for appointment as a mutawalli of a wakf, or where the Board is satisfied, for reasons lo be recorded by it in writing, that the filling up of 'be vacancy in the office of a mutawalli is prejudicial to the interests of ihe wakf, the Board may, by notification in the Official Gazette, assume direct m.inappment of the wakf for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification.

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- (2) The State Government, may, on its own motion or on the application of any person interested in the wakf. call for the records of any case for the purpose of salislying itself as to the correctness, legality or propriety of the notification issued by flic Board under sub-section (1) and pass such orders as it may think fit and the orders so made by the State Government shall be final and shall be published in ihc manner specified in subjection (7).
- (3) As soun is possible after *the* close of r\cry financial >ear. Itic Board shall send to the State Government a detailed in regard to every wakf under its direct management, giving therein—
 - (a) the details of the income of the wakf for ti.e year immediately preceding the year under report;
 - (b) the steps taken to improse the management and "income of rhe \cdot ..tkf;
 - (c) the period during which the wakf has been under the direct management of the Board add explaining the reasons as to why it hanot been possible to entrust the management of the wakf to the raufciwcilli or any committee of management during the year; and
 - (d) such other matters as may be prescribed.
- (4) rhe ,State Government shall exruine the report submitted to it imder sub-section (,?), and after such examilation issue such directions or instructions to the Board as it may think fit and the Board shall comply with such directions or instructions on receipt thereof.

Gfi. Whenever a deed of wakf or any decree or order of a court of any scheme of management of any wakf provides that a court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise exercise superintendence over the •vr.fcf, then notwithstanding anything contained in such deed of wakf, decree, • inier or scheme, such powers aforesaid shall he exerei".?Me by the State Government:

Provided that where a Board has h>en established, the State Government shall consult the Board before exercising such powers.

67. (1) Whenever the supervision or management of a wakf is vested m any committee appointed by the wakf. then, notwithstanding anything contained in this Act, such committee shfil continue to function until it is -uper-eded by the Board or until the expiry of its term as may be specified by the' wakf, whichever is earlier:

Provided that such committee shall function under the direction. coUrol and supervision of the Board and abide by such directions as the Board may issue from time to time:

Provided further that if the Board is satisfied that any scheme for the m;iQagement of a wakf by a committee is inconsistent with any provision of this Act or of any rule made fUcrenruter or with the directbns of the wakf,

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of o»mmittee w manageit may, ai any time, modify the scheme m such manner us may be necessary to bring it in, conformity with the direcikms ol" the wakl' or of the provisions ol thb> Act and the rules made thereunder.

('J) Notwithstanding anything contained in this Act arid in the deed of the waicf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (i) is not functioning properly and satisfactorily, or that the wakf is being mismanaged and that in the interest ot its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the wakf, in so far as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the Committee to show cause wifbin such time, not being less than one month, as may be specified in the notice, *as* to why such action shall not be taken.

- (3) Every order made by the Board under sub-section (2) shall be pub-h->-i:d' n the prescribed manner and on such publication shall be binding on \dot{r} 'v mutawalli and all persons having any interest in the wakf.
 - (4) Any order made by the Board under sub-sectimi (?) shall be final:

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal.

- (5) The Board shall, whenever it supersedes any committee under subsection (2), constitute a new committee of management simultaneously with (he order made by it under subjection (2).
- (rt) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that sucli member has abused his position ws such member or had tnowingly acted in a manner prejudicial to the intereits of the wakf, and every such order for the removal of any member shaD be served upon him by registered pout:

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the committee may, within a period of thirty days from the date of service of Ihe order on him prefer at appeal against such order fo

the Inbuual and the Tribunal may, after giving a reasonable ppportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by ihe Board and the order made by the Iribunal in such appeal shall be linal.

Duty of muia-walli at cow.mittee 10 deliver possession of records, etc.

- 68. (1) Where any mutawalli or committee of management has been removed by the Board in accordance with the provisions of this Act, or of any scheme made by the Board, the mutawalli or the co.nmittee so removed from the office (hereinafter in this section referred to as the removed mutawalli or committee) shall hand over charge and deliver possession of the records, ;'cji)unts and all properties of the wakf (including cash") to the successor mutawalli or the successor committee, within one month from the date specified in the order.
- (2) Where any removed mutawalli ni committee fails to deliver charge or deliver possession of the records, accounts and properties (including cash) to the successor mutawalli or committee within the time specified in subsection (I), or prevents or obstructs such mutawalli or committee, from obtaining possession thereof after the expiry of the period aforesaid, the successor mutawalli or any member of the successor committee may make an application, accompanied by a certified copy of the order appointing such successor mutawalli or committee, to any Magistrate of the first class within the local limits of whose jurisdiction any p'irt of tru- wakf property is situated and, thereupon, such Magistrate may, after giving notice to the removed mutawalli or members of the removed committee, make an order directing the delivery of charge and possession of such records, accounts and properties (including cash) of the wafcf to the successor mutawalli or the committee, as the case may be, within such time as may be specified. In the order.
- (3) Where the removed mutawalli or any member of the removed committee, omits or fails to deliver charge and possession of the records, accounts and properties (including cash) within the time specified by the Magistrate under sub-section (2), the removed mutawalli or every member of the removed committee, as the case may be, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.
- (4) Whenever any removed mutawalli or any member of the removed committee omits or fails to comply with the orders made by the Magistrate under sub-section (2), the Magistrate may authorise the successor mutawalli or committee to take charge and possession of such records, accounts, properties (including cash) and may authorise such person to take such police assistance as may be necessary for the purpose.
- (5) No order of appointment of the successor mutawalli or committee, shall be called ir question in the proceedings before the Magiitratc under this section.

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- (6) Nothing contained hi this section shall bar the institution of any suit ill a competent civil court by any person aggrieved by any order made under this section, to establish that he has right, title and interest in the properties specified in the order made by the Magistrate under sub-section (2).
- 69. (1) Whenever the Board is satisfied, whether on its own motion or on the application of not less than five persons interested in any wakf, that it is necessary or desirable to frame a scheme for the proper administration of the wakf, it may by, an order frame such scheme for the administration of the wakf, after consultation with the muiawalli or the applicant in the prescribed manner,

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(2) A scheme framed under sul>secUon (/) may provide for the removal of the mutawalli of the wakf holding office as such immediately before the date on which the scheme comes into force:

Provided that where any such scheme provides for the 1 emoval of an\ hereditary mutawalli, the scheme shall also piovide for the appointment of the person next in hereditary succession to the mutawalli so removed, us one of the members of the committee appointed for tlie proper administration of the wakf.

(3) Every order made under sub-section (2) shall be published in 'he prescribed manner, and. on such publication shall be final and binding on ihe mutawalli and all persons intciested in the wakf:

Provided that any person aggrieved by an order made under this section may, within sixty days from the date of the order, prefer an appeal to the Tribunal and after hearing such 'appeal, the Tribunal may confirm, reverse or modify the order:

Provided further that tlie Tribunal shall him: no power to stay the operation of the order made under his section.

- ('/) The Board may, at any time by an order, whether made before or after the scheme has come info force, cancel or modify the scheme.
- (5) Pending the framing of the scheme for the proper administration of the wakf, the Board may appoint a suitable person to perform all or any of trie functions of the mutawalli thereof and to exercise the powers, and perform the duties, of such mutawalli.
- 70. Any, person interested in a wakf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the Board is satisfied that reasonable grounds for believing that the affairs of the wakf are being mismanaged, it shall take such action thereon as it thinks fit.

Inquiry 1 elating loadminisinttion of wakf.

Manner of holding inquiry.

- 71, (1) The Board may, either on an application received under section 73 or on its own motion,—
 - (a) hold an inquiry in such manner as may be prescribed; or
 - (6) authorise any person in this behalf to hold ;in inquiry inlo any matter relating to a wakf and take such action as it thinks fit.
- (2) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in ft civil court under the Code of Civil Procedure, 1908 for enforcing the attendance of witnesses and production of documents.

5 of 1908.

CHAPTER VII

FINANCE OF THE BOARD

Annual contribution payable to Board.

72. (1) The mutawalli of every wakf, the net annual income of which is not less than five thousand rupees, shall pay annually, out of the net annual income derived by the wakf, such contributions, not exceeding seven per cent, of such annual income, as may be prescribed, to the Board for the service^ rendered by such Board to the wakf.

bxphnation I.—For the purposes of this Act, "net annual income" shall mean the gross income of the wakf from all sources, including nazars and offerings which do not amount to contributions to the corpus of the wakfs, in a year after deducting therefrom the following, namely:—

- (i) the land revenue paid by it to the Government;
- (if) the rates, cessers, taxes and licence fees, paid by it to the Government or any local authority;
- (Hi) expenditure incurred for all or any of the following purposes, namely:—
 - (a) maintenance of, or repairs, to, irrigation works, which shall not include the capital cost of irrigation;
 - (ft) seeds or seedlings;
 - (c) manure;
 - (d) purchase and maintenance of agricultural implements;
 - (e) purchase and maintenance of cattle for cultivation;
- (f) wages for ploughing, watering, sowing, transplanting, harvesting, threshing and other agricultural operations:

Provided that the total deduction in respect of an expenditure incurred under this clause shall not exceed ten per cent, of the income derived from lands belonging to the wakf;

(iv) expenditure on sundry repairs to rented buildings, not exceeding hve per cent, of the annual rent derived therefrom, or the actual expenditure, whichever is less;

(v) sale proceeds of immovable properties or rights relating to, or arising out of immovable properties, if such proceeds are reinvested to earn income for the wakf:

Provided that the following items of receipts shall not be deemed to be income lor the purposes of this section, namely:—

- (a) advances and deposits recovered and loans taken or recovered;
- (b) deposits made as security by employees, lessees or contractors and other deposits, if any;
 - (c) withdrawals from banks or oE investments:
 - (d) amounts recovered towards costs awarded by courts;
- (e) sale proceeds of religious books and publications where such sales are undertaken as an un-remuneralive enterprise with a view to propagating religion;
- (/) donations in cash or kind or offerings made by the donors as contribution to the corpus of the wakf:

Provided that the interest on income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income;

- (#) voluntary contributions received in cash or kind for a specific service to be performed by the wakf and expended on such service;
 - (h) audit recoveries.

Explanation //.^—In determining, the net annual income for the purposes of this section, only the net profit derived by any wakf from its remunerative undertakings, if any, shall be taken as income, and in respect of its non-remunerative undertakings, such as, schools, colleges, hospitals, poor homes, orphanages or any other similar institutions, the grants given by the Government or any local authority or donations received from the public or fees collected from the pupils of educational institutions shall not be taken as income.

- (2) The Board may in the case of any mosque or orphanage or any particular walf reduce or remit such contribution for such time as it thinks fit.
- (3) The mutawalli of a wakf may realise the contributions payable by him under sub-section (1) from the various persons entitled to receive nny pecuniary or other material benefit from the wakf. but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion, as the value of the benefits receivable by such person bears to the entire net annual income of the wakf:

Provided that if there is any income of the wakf available in excess of the amount payable as dues under this Act, other than as the contribution under sub-section (1), and in excess of the amount payable under the wakf deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub-section (1) in respect of a wakf shall, suDject to the prior, payment of any does to the Government or any local authority or of any other statutory first charge on the wakf property or the in-

come thereof, be a irst charge on the income of the wakf and shall be recoverable, an a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, as an arrear of land feveiWe.

- (5) If a mutawalli realises the income of ilie w<kf and refuses to pay of does not pay such contribution, he shall also be personally liable for such contribution which may be realised from his person or property in the manner aforesâid.
- (6) Where, after the commencement of this Act, the mutawalli of a wakf fails to submit a return of the net annual income of the wakf within the time specified therefor or submits a return which, in the opinion of the Chief Executive Officer is incorrect or false in any material particular, or which does not comply with the provisions of this Act or any rule of order made thereunder, the Chief Executive Officer may assess the net annual income of the wakf to the best of his judgment or revise the net annual income as shown in the return submitted by the mutawalli and the net annual income as so assessed or revised shall be deemed to be the net annual income of the wakf for the purposes of this section:

Provided that no assessment of net annual income or revision of return submitted by mutawalli shall be made except after giving a notice to the mutawalli calling upon him to show cause, within fee time specified in the notice, as to why such assessment or revision of the return shall not be made and every such assessment or revision shall be made after considering the reply if any, given by the mutawalli.

- (7) Any mutawalli who is aggrieved by the assessment or revision made by the Chief Executive Officer, under sub-section (6), may prefer an appeal to the Board within thirty days from the date of the receipt of the 'assessment or revision of return and the Board may, after giving the appellant a reasonable opportunity of being heard, confirm, reverse or modify the assessment or revision or the return and the decision of the Board thereon shall be final.
- (8) If, for any reason, the contribution or any portion thereof leviable under this section has escaped assessment in any year, whether before or after the commencement of this Act, the Chief Executive Officer may, within five years from the last date of the year to which such escaped assessment relates serve upon the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment, and demanding payment thereof within thirty days from the date of service of such notice, and the provisions of this Act and the rules made thereunder, shall, as far as may be, apply as if the assessments were made under this Act, in the first instance.

Power of
Chief being
Executive
Officer to
direct person to
make payments.

Power of
Danks or
odirect person to
make payments.

73. (1) Notwithstanding anything contained in any other law for the time being in force, the Chief Executive Officer, if he is satisfied that it is necessary and expedient so to do, make an order directing any bank in which, or any person with whom any money belonging to a wakf?s deposited, to pay the contribution, leviable under section 72, xmt of such money, as may be standing to the credit of the wakf in such bank or may be deposited with such person, or out ©f the moneys which may, from time to time, be received by bank or other person for or on behalf of the wakf by way of deposit, and on receipt of such orders, the **bank** or the other person, as the case may be, shall when

no appeal has been preferred under sub-section (3), comply with such orders, or where an appeal has been preferred under sub-section (3), shall comply with the orders made by the Tribunal on such appeal.

- (2) Every payment made by a bank or other person in pursuance of any order made under sub-section (2), shall operate as a full discharge of the liability of such bank or other person in relation to the sum so paid.
- (3) Any bank or other person who is ordered under sub-section (2) to make any payment may, within thirty days from the date of the order, prefer an appeal against such order to the Tribunal and the decision of the Tribunal on such appeal shall be final.
- (4) Every officer of the bank or other person who fails, without any reasonable excuse, to comply with the order made under sub-section (2) or, as the case may be, under sub-section (5), shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.
- 74 (2) Every authority empowered *to* disburse any perpetual annuity payable to a wakf under any law relating to the abolition of zamindaries or jagirs, or laying down land ceilings, shall, or receipt of a certificate from the Chief Executive Officer, specifying the amount of contribution payable by the wakf under section 72 which remains unpaid, deduct before making payment of the perpetual annuity to the wakf, the amount specified in such certificate and remit the amount so deducted to the Chief Executive Officer.

Deduction of contribution from perpetual annuity payable to the wakf.

- (2) Every amount remitted under sub-section (2) to the Chief Executive Officer shall be deemed to be a payment made by the waicf and shall, to the extent of the amount so remitted, fiperate as a full discharge of the liability of such authority with regard to the payment of the perpetual annuity.
- 75. (1) For the purpose of giving effect to the provisions of this Act, the Board may, with the previous sanction of the State Government, borrow such sum of money and on such terms and conditions as the State Government may determine.

Power of Board to borrow.

- (2) The Board shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.
- 76. (2) No mutawalli, Executive Officer or other person in charge of the administration of a wakf shall lend any money belonging to the wakf or any wakf property or borrow any money for the purposes of the wakf except with the previous sanction of the Board:

waJli not to lend Or borrow moneys without sanction.

Muta-

Provided that no such sanction is necessary if there is an express provision in the deed of wakf for such borrowing or lending, as the case may Be.

(2) The Board may,, while according sanction, specify any terms and conditions subject to which the person referred to in sub-section (2) is authorised by him to lend or borrow any money or lend any other wakf property.

- (3) Where any money is lent or borrowed, or other wakf property is lent in contravention of the provisions of this seciion, it shall be lawful for the Chief Executive Officer,—
 - (a) to recover an amount equal to the amount which has been so lent or borrowed, together with interest due thereon, from the personal funds of the person by whom such amount was lent or borrowed;
 - (b) to recover the possession of the wakf property lent in contravention of the provisions of this Act, from the person to whom it was lent, or from persons who claim title to such property through the person to whom such property was lent.
- 77, (1) All moneys received or realised by the Board under this Act and all other moneys received as donations, benefactions or grants by the Board shall form a fond to be called the Wakf Fund.
- (2) All moneys received by the Board, as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head.
- (5) Subject to any rules that may be made by the State Government in this behalf, the Wakf Fund shall be under the control of the Board, so, however, that the Wakf Fund under the control of common Wakf Board shall be subject to rules, if any, made in this behalf by the Central Government.
 - (4) The Wakf Fund shall be applied to—
 - (a) repayment of any loan incurred under section 75 and payment of interest thereon;
 - (b) payment of the cost of audit of the Wakf Fund and the accounts of wakfs:
 - (c) payment of the salary and allowances to the officers and staff of the Board;
 - (d) payment of travelling allowances to the Chairperson, members, of the Board;
 - (e) payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act;
 - (j) payment of all expenses incurred by the Board for the discharge of any obligation imposed on it by or under any law for the time being in force-
- (5) If any balance remains after meeting the expenditure referred to in sub-section (4), the Board may use any portion of such balance for the preservation and protection of wakf properties or for such other purposes as it may deem fit.
- 78. (1) The Board shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and forward a copy of the same to the State Government.
- (2) On receipt of the budget forwarded to it under sub-section (I), the State Government shall examine the same and suggest such alterations, corrections, or modifications to be made therein as it may think fit and forward such suggestions to the Board for its consideration.
- (5) On receipt of the suggestions from the State Government the Board may make written representations to that Government with regard to tlv-altenitions, corrections or modifications suggested by that Government and the

Waii Fund,

Budge t of Board. State Government shall, after considering such representations, communicate, within a period of three weeks from the date of receipt thereof, to the Board its final decision in relation to the matter and the decision of the State Government shall be final.

- (4) On receipt of the decision of the State Government under subsection (3), the Board shall incorporate in its budget all the alterations, corrections, modifications finally suggested by the State Government and the budget as so altered, corrected or modified, shall be the budget which shall be passed by the Board-
- 79. The Board shall cause to be maintained such booki of account and other books in relation to its accounts in such form and in such manner as may be provided by regulations.

Accounts of Board,

80. (1) The accounts of the Board shall be audited and examined annually by such auditor as may be appointed by the State Government.

\udit I. 1 acconnl s of Board.

- (2) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify whether the accounts of every wakf under the direct management of the Board have been kept separately and whether such accounts have been audited annually by the State Examiner of Local Funds and shall also specify all cases of irregu'ar, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure on loss as due from such person.
 - (3) The cost of the audit shall be paid from the Wakf Fund.
- 81. The State Government shall examine the auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such oFders on the report its it thinks fit

State Government 1 o pass orders on auditor's report.

82. (2) Every sum certified to be due from any person by an auditor in' his report under section 80, be paid by such person within sixty days after the service of a demand notice by the Board.

Dues of Honrd lobe ICLOveiec" ns arrears of landrevenue.

(2) If such payment is not made in accordance with the provisions of sub-section (I), the sum payable may, on a certificate issued by the Board, after giving the person concerned an opportunity of being heard, be recovered as an arrear of land revenue.

CHAPTER VIIT.

JUDICIAL PROCEEDINGS

Coaslitutioo of **Tribunals**, etc.

- 83. (i) The Slate Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.
- (2) Any mutawalii person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time hai been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.
- (*J*) Where any application made under sub-section (*1*) relates to any wakf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalJi or any one of the mutawallis of the wakf actually and voluntarily resides, carries on business or personally works for gain, and. where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the wakf or any other person interested in the wakf or the wakf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such wakf or wakf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

- (/) Every Tribunal shall consist of one person, wlio .shall be LI momber of the State Judicial Service holding a rank, not below that of a District. Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.
- (5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil couri under the Code of CivH Procedure. 1908, while trying a suif, or executing a decree or orde>\

5 of 1908.

(6) Notwithstanding anything contained in the Code of Civil Procedure. 1908, the Tribunal shall follow such procedure as may be prescribed.

5 of 1908.

- (7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.
- (8) The Execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908.

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

84. Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a wakf or wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute•

Tribunal to hold proceeding! expeditiously and to furnish to the parties copies of its decision.

85. No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

Bar of jurisdiction of civil courts.

86. Notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the tune being in force, where any suit or other legal proceeding is instituted or commenced—

Appointment of a receiver in certain cases.

- (a) by or on behalf of a Board—
- (i) to set aside the sale of any immovable property, which is wakf property, in execution of a decree or order of a civil court;
- (/t) to set aside the transfer of any immovable property, which is wakf property, made by the mutawalli thereof, whether for valuable consideration or not, without or otherwise than in accordance with, the sanction of the Board;

5 or 1908.

("O to recover possession of the property referred to in clause (a) or clause (o) or to restore possession of such property to the niutawalli of the concerned wakf; or

(6) by a mutawalli it) recover possession of immovable property, which is wakf propeity, which has been transferred by a previous mutawalli, whether for valuable consideration or not, without otherwise than in accordance with the sanction of the Board, and which is in the possession of the defendant,

Lhe court may, on the applicaijon of the plaintiff, appoint a receiver of such property and direct such receivei io pay from time to time to the plaintiff, out of the income of the pioperty, such amount as the court may consider to be necessary for further prosecution of the suit.

Bar to the enforcement of right on behalf of unregistered wakfs.

- 87. (1) Notwithstanding anything contained in any other law for the Line being in force, no suit, upp^l oi uu.i-i legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act. shall be instituted or commenced or heard, tried or decided by any court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commencement unless such wakf has been registered, in accordance with the provisions of this Act.
- (2) The provisions of sub-section (1) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act.

88. Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any civil court.

Bar to challenge the validity of any notification, etc.

8*. No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or laft.

Notice of suits by parties against Board.

90. (i) In every suit or proceeding relating to a title to or possession of a wakf property or the right of a mutawalli or beneficiary, the court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

of suits, etc., by courts.

Notice

(2) Whenever any wakf property is notified for sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates of 'oves due to the Government or any local authority, notice shall be given

to the Board by the court, Collector or other person under whose order the sale is notified.

- (3) In the absence of a notice under sub-section (2), any decree or order passed in the suit or proceeding shall be declared void, if the Board, wHhin one month of its coming 10 know of such suit or proceeding, applies to the court in this behalf.
- (4) To the absence of a notice under sub-section (.?), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the court or other authority under whose order the sale was held.
- 91. (1) If, in the course of proceedings under the Land Acquisition Act. 1894 or under any law for the time being in force relating to the acquisition of land or other property, it appears to the Collector before an award is made that any property under acquisition is wakf property, a notice of such acquisition shall be served by Collector on the Board and further proceedings shall be stayed to enable the Roml to appear and plead as a party to the proceeding at any ('me within thiee months from the date of the receipt of such notice,

Proceedings under Act 1 of 1S94,

Explanation,—The reference to the Collector in the foregoing provisions of this sub-section shall, in relation to any other law referred to therein, be construed if the Collector in not ihe competent authority under such other law to make an award of Ihe compensator) or other amount payable for acquisition of land or ouVr pioperty thereunder- as a reference to the authority under such other law competent to male such award.

- (2) Where the Board has reason to believe that any property under acquisition is wakf property, it rmy at n-iv time before the award is made appear and plead as a party to the proceeding.
- (3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2), no order "kill V p; wd H'TIC section 31 or section 32 of the Land Acquisition Act, I 8°-4 or under the corresponding provisions of the other law referred to in "ib-section (1) without giving an opportunity to the Board to be heard.
- (4) Any order passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under <V corresponding provision of the other law referred to in sub-section (T) without giving art opportunity to the Board to be heard,, shall be dccWH vvf^{l} if $t^{\wedge} \cdot$ Tlonr.i vithin nne month of its coming to know of the order applies in this behalf to the authority which made the order.
- 92. In any suit or proceeding in respect of a wakf or any wakf property the Board may appear and plead as a piir'v to the suit or proceeding

Board io be party to suit or proceeding

Bar to compromise of suits by or against mutawallis.

93. No suit or proceeding in any court by or against the mutawalli of a wakf relating to title to wakf property or the rights of the mutawalli shall be compromised without the sanction of the Board.

- 94. (I) Where a mutawalli is under an obligation to perform any act which is recognised by Muslim law as pious, religious or charitable and the mutawalli fails to perform such act, the Board may apply to the Tribunal for an order directing the mutawalli to pay to the Board or to any person authorised by the Board in this behalf the amount necessary for the performance of such act.
- (2) Where a mutawalli is under an obligation to discharge any other duties imposed on him under the wnkf and the mutawalli wilfully fails to discharge such duties, the Board on any person interested in the wakf may make an application to the Tribunal and the Tribunal may pass such order thereon as it thinks fit.
- 95. Where, under this Act any period has been specified for the filing of any appeal, the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period so specified, entertain the appeal after the expiry of th© said period •

Power of appellate authority to entertain appeal after expiry of specified period.

CHAPTER IX

MISCELLANEOUS

Power of Central Government to regulate secular activities of wakfs.

- W- (2) For the purpose of regulating the secular activities of wakfs, the Central Government shall have the following powers and functions, namely:—
 - (a) to lay down general principles, and policies of wakf administration in so far as they relate to the secular activities of the wakfs;
 - (b) to co-ordinate the functions of the Central Wakf Council and the Board, in so far as they relate to their secular functions;
 - (c) to review administration of the secular activities of wakfs generally and to suggest improvements, if any.
- (2) In exercising its powers and functions under sub-section (1), the Central Government may call for any periodic or other reports from any Board and may issue to the Board such directions as it may think fit and the Board shall comply with such directions.

Explanation.—For the purposes of this section "secular activities" shall include social, economic, educational and other welfare activities.

97. Subject to any directions issued by the Central Government under section 96> the State Government may, from time to time, give to the Board such general or special directions as the State Government thinks fit and in the performance of its functions, the Board shall comply with such directions.

Directions by Stat»
Government

98. As soon as may be after the close of a financial year, the State Government shall cause a general annual report on the working and administration of the State Wakf Board and the Administration of wakfs in the State during that year to be prepared and laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House, and every such report shall be in such form and shall contain such matters as may be provided by regulations.

Annual report by State Government.

99. (I) If the State Government is of opinion that the Board is unable to perform or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully and without sufficient cause failed to comply with any direction issued: by the Central Government under section 96 or the State Government under section 97, or if the State Government Is satisfied on consideration of any report submitted after annual inspection, that the Board's continuance is likely to be injurious to the interests of the wakfs in the State, the State Government may, by notification hi the Official Gazette, supersede the Board for a period not exceeding six months:

Power to supersede Board.

Provided that before issuing a notification under this sub-section, the State Government shall give a reasonable time to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

- (2) Upon the publication of a notification under sub-section (1) superseding the Board,—
 - (a) all the members of the Board shall, as from the date of supersession, vacate their offices as such members;

- (b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall, duiing the period of supersession, be exercised and performed by such person or persons as the State Government may direct; and
- (c) all property vesied In the Board shall, during the period of supersession vest in the State Government
- (3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government may—
 - (a) extend the period of supersession for such further period as it may consider necessary; or
 - (b) reconsUiute the Board in the manner provided in section 14.

Protec-Lion of action takes in good faith. 100. No suit or other legal proceeding shall lie against the Board oi Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended t_0 be done under this Act.

Survey
Commislionetr,
members
and
officers
of the
Board
deemed
to bo
public
servants.

101. (1) The Survey Commissioner, members of the Board, every officer, every auditaor of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

(2) Every mutawalli of a wakf, every member of managing committee, whether constituted by the Board or under any deed of wakf, every Executive Officer and every person holding any omc_e in a wakf shall also be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Special provision for reorganisation of certain Boards.

102. (1) Where on account of the reorganisation of States under any law providing reorganisation of States, the whole or any part of a State in respect of which a Board was. immediately before the day of such reorganisation, functioning has been transferred on that day another State and by reason of such transfer it appears to the Government of a State in any part of which the Board is functioning that the Board should be dissolved or that it should be reconstituted a» Intra-Stat© Board for the whole or any part of that State, the State Government may irarne a scheme or such dissolution or such reconstitution, including proposals regarding the transfer ot the assets, rights and liabilities of the Board to any other Board or State Government and the transfer or re-employment of employees of the Board forward th« scheme to the Central GoYernment.

- (2) On receipt of a scheme forwarded to it under sub-«ection (1), the Central Government may, after consulting the State Governments concerned, approve the scheme with or without modifications and give effect t_0 the scheme so approved by making such order as it thinks fit.
- (3) An order under sub-section (2) may provide for all or any of the following matters, namely:—
 - (a) the dissolution of the Board;

- (b) the reconstitution in any manner whatsoever of the Board including the establishment, where necessary, of a new Board.
- (c) the area in respect of which the reconstituted Board or new Board shall function and operate;
- (d) the transfer, in whole or in part, of the assets, rights and liabilities of the Board (including the rights and liabilities under any contract made by it) to any other Board or State Government and the terms and conditions of such transfer;
- (e) ihe substitution of any such transferee for the Board, or the addition of any such transferee, as a party to any legal proceeding to which the Board is a party; and the transfer of any proceeding pending before the Board t_0 any such transferee;
- (f) the transfer or re-employment of any employee of the Board to or by, any such Lransfe«oe ari'l subject to the provisions of law providing for the reorganisation oi' the concerned State, the terms and conditions of service applicable to such employees after such transfer or re-employmeni; and
- (g) such incidental, consequential and supplemental matters as may be necessary to give effect to the approved scheme.
- (4) Where an order is made under this section transferring the assets, rights and liabilities of any Board, then, by virtue of that order, such assets, right-s and liabilities of the Board shall vest in, and be the assets, rights and liabilities of, the transferee.
- (5) Every order made under this section shall be published in the Official Gazette.
- (6) Every order made under this section shall be laid before each House of Parliament, as soon as may be, after it is made.
- 103. (1) Where on account of the territorial changes brought about by any law providing for the reorganisation of any State, this Act is as from the date on which that law comes into force applicable only to any part or parts of a State but has not be n brought into force in the remaining part thereof, then notwithstanding anything contained in this Act, it shall be lawful for the Government of the State to establish one or more Boards for such part or parts in which this Act is in force and in such a case any reference in this Act to the word "State" in relation of a Board shall be construed as a reference to that part of the State for which the Board is established.

Special provision for establishment of Board for part of a State

(2) Where any such Board has been established and it appears to the Government of the State that a Board should be established for the whole of the State, the State Government may, by order notified in the Official Gazette dissolve the Board established for the part of the State or reconstitute and reorganise such Board or establish a new Board for the whole of the State and thereupon, the assets, rights and liabilities of the Board ior the part of the State shall vest in and be the assets, rights and liabilities of the reconstituted Board or the new Board, as the case may be.

Application of Act t₀ properties given or donated by persons not professing Islam for support of certain wakf.

- 104. Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a wakf being—
 - (a) a mosque, idgah, imambara, dargah, khangah or a maqbara;
 - (b) a Muslim graveyard;
 - (c) a choultry or a musafarkhana,

then such property shall be deemed to be comprised in that wakf and be dealt in the same manner as the wakf in which it is so comprised.

Power of Board and Chief Executiv[©] Officer to require copiei of documents, etc., to be furnished. 105. Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Board or the Chief Executive Officer to require any person having the custody of any record, register, report or other document relating to a wakf or any immovable property, which is wakf property, to furnish subject to the payment of necessary costs, copies of, or extracts from, any such record, register, report or document and every person to whom such a requisition is made, shall furnish, as soon as may be practicable, to the Board or Chief Executive Officer copies or extracts from the required record, register, report or other document.

Powen of Central Government to constitute common Board!.

- 106. (1) Where the Central Government is satisfied that by reasons of—
 - (i) the smallness of the Muslim population in two or more States,
 - (it) the slender resources of the Wakfs in such States, and
- (ni) the disproportion between the number and income of the wakfs and the Muslim population in such States,

it is expedient in the interests of the wakfs in the States and the Muslim population of such States, to have, instead of separate Boards for each of such States, a common Board, it may, after consultation with the Government of each of the concerned States, establish, by notification in the Official Oazette;

a common Board for such States as it may deem fit, and may, by the same or any subsequent notification specify the place at which the principal office of such common Board shall be located.

- (2) Every common Board established under sub-section (1) shall, as far as practicable, consist of the persons spt-cified in sub-section (1) or, as the case may be, sub-section (7) of section 14.
 - (3) Whenever any common Board is established under sub-section (1),—
 - («) all powers vested in the State Gove. nment under any deed of wakf or any provision of law for the time being in force relating to wakfs, shall stand transferred to, and vested in, the Central Government and, thereupon, references in such deed of wakf i,r law to the State Governments shall be construed as references to the Central Government:

Provided that while establishing a common Board for two or more States, the Central Government shall ensure that at least one representative of each of the concerned States is included as a member of the Board:

- (ft) references in this Act to a State shall be construed as references to each of the States for which the common Board has been established;
- (c) the Central Government may, without prejudice to any rule applicable to a Board in a State, make, by notification in the Official Gazette, rules regulating the conduct of business by and affairs of, the common Board.
- (4) The common Board shall be a body corporate, with objects hot confined to one State, having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property, subject to such conditions and restrictions as may be specified by the Central Government, and shall by the said name sue or be sued.
- 107. Nothing contained In the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any wakf or for possession of any interest in such property.

108. The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property, within the meaning of clause (f) of section 2 of the Administration of Evacuee Property Act, 1950 which immediately before it became such evacuee property within the said meaning was property comprised in nny wakf and, in particular any entrustment (whether by transfer of any documents or in any other manner and whether generally or for Specified purpose) of any such property to a Board made before the commencement of this Act in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall Nave, and shall be deemed always to have had, notwithstanding anything

of wakf propertics. Special provision as to evacuee wakf propw-

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contained in any other provision of this Act, effect as if such cntrustment had operated to— ,

- (a) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (i) of section 11 of the Administration of Evacuee Property Act, 1950 with effect from the date of such entrustment, and
- JL of 1950.
- (b) authorise such Board to assume direct management of the wakf concerned for so long as it might deem necessary.

Power to tnakm rule*.

- 109, (I) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act, other than those of Chapter III.
- (2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—
 - (i) other particulars which the report of the Survey Commissioner may contain, under clause (f) of sub-section (3) of section (4);
 - (iii) any other matter under clause (/) of sub-section (4) of section 4;
 - (tfi) the particulars which a list of Wakfs published under subsection (2) of section 5, may contain;
 - (iv) the manner of election of members of the Board by means of a single transferable vote, under sub-section (2) of section 14;
 - («) the terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 23;
 - (vz) the conditions and restrictions subject to which the Chief Executive Officer or any other officer may inspect any public office, records or registers under section 29;
 - (vii) the conditions subject to which an Executive Officer and supporting staff may be appointed under sub-section (i) of section 38;
 - (viii) the manner in which an inquiry may be held by the Chief Executive Officer under sub-section (I) of section 39;
 - (ix) the form in which, and the time within which, a separate budget for Wakfs under the direct management of the Board shall be prepared under sub-section (1) of section 45;
 - (x) the interval at which accounts of Wakf a may be audited in pursuance of the provisions of sub-seotlon (7) of section 47;
 - (xi) the time within which, the sale of any property Is to be informed under the first proviso to sub-section (2) of section 51 and the manner in which the approval given under sub-section (3) of that section shall be published;
 - (xii) the guidance subject to which the Collector shall recover the property transferred in contravention of the provisions of this Act, under section 52;

- (xiii) the manner of service of notice issued under sub-section (7) of section 64 and the manner in which any inquiry is to be made under sub-section (3) of that section;
- (xiv) the manner in which any inquiry may be held under section 64 or section 71;
- (xv) the other matters which may be specified in the report submitted under sub-section (3) of section 65;
- (xvi) the manner of publication of order made under sub-section (2) of section 67;
- (xvii) the manner in which consultation may be made with mutawalli under sub-section (7) of section 69;
- (xviii) the manner of publication of order made under sub-section (3) of section 69;
- (xix) the rate at which contribution is to be made by a mutawalli under section 72;
- (xx) the payment of moneys into the Wakf Fund, the investment, the custody and disbursement of such moneys under section 77;
- (xxi) the form in which, and the time within which, the budget of the Board may b© prepared and submitted under section 78;
- (xxii) the time within which application is to be made to the Tribunal under subjection (2) of section 83;
- (xxlU) the procedure which the tribunal shall follow under subsection (6) of section 83;
- (xxiv) the form in which the annual report is to be submitted and the matters which such report shall contain under section 98; and
- (xxv) any other master which is required to be, or may be, prescribed.
- 110. (!) The Board may, with the previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made thereunder, for carrying out its functions tinder this Act.
- Powers to make regulation.! by the Board.
- (2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:—
 - (a) the time and places of the meetings of the Board under subsection (7) of section 17;
 - (b) the procedure and conduct of business aft the $meeti_ng_s$ of the Board;
 - (c) the constitution and functions of the committee and the Board and the procedure for transaction of business at the meetings of such committees;

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- (d) the allowances or fees to be paid to ^be Chairperson or members of the Board or members of committees;
- (e) the terms and conditions of service of the officers and other employees of the Board under sub-section (2) of section 24;
- *if)* the forms of application for registration of Wakfs further particulars to be contained therein and the manner and place of registration of Wakfs under sub-section (3) of section 36:
- (g) further particulars to be contained in the register of Wakfs under section 37;
- (h) the form in which, and the time within which, the budgets of Wakfs may be prepared and submitted by the Mutawalli and approved by the Board under sub-section (i) of section 44;
- (0 the books of accounts and other books to be maintained by the Board under section "19;
- (j) fees payable for inspection of proceedings and records of the Board or for issue of copies of the same;
- (k) persons by whom any order or decision of the Board niay be authenticated; and
- (I) any other matter which has to be, or may be, provided by regulations.
- (3) All regulations made under this section shall be published in the Official Gazette and shall have effect from the date of such publication.

Laying of rules and regulations before State Lcgi«lafatre. 111. Every rule made under section 109 and every regulation made under section 110 shall be laid, as soon as may be after It is made, before the State Legislature.

Repeal and savings.

112. (1) The Wakf Act, 1954 and the Wakf (Amendment) Act, 1984 are hereby repealed.

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- (2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.
- (3) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in 'the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of •the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken.

113. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

power of remove difflcul-

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

(2) However, order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

K. L. MOHANPUBIA. Secy, to the Govt. of India-